

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELISSA LYNNE HORNER,

Defendant.

CR 22–16–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 15.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Horner is charged by information with seventeen counts of failure to truthfully account for and pay over withholding and F.I.C.A. taxes, in violation of 26 U.S.C. § 7202 (Counts I–XVII) and seventeen counts of failure to file employer’s quarterly return and pay tax, in violation of 26 U.S.C. § 7203 (Counts

XVIII–XXXIV). Judge DeSoto recommends that this Court accept Horner’s guilty plea as to Counts II and XIX after she appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto’s Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto’s Findings and Recommendation (Doc. 15) is ADOPTED in full.

IT IS FURTHER ORDERED that Horner is adjudged guilty as charged in Counts II and XIX of the Information.

DATED this 25th day of April, 2022.



Dana L. Christensen, District Judge
United States District Court